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No. 92-576

In the Supreme Court of the United States of America

October Term, 1992

TV COMMUNICATIONS NETWORK, INC.,

Petitioner,

vs.

TURNER NETWORK TELEVISION, INC.,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Does this Court's decision in *Eastman Kodak* v. *Image Technical Services, Inc.*, 112 S. Ct. 2072 (1992) render erroneous the Tenth Circuit's finding that Petitioner failed to allege a product market sufficient to provide a basis for a claim against TNT, Inc. under Section 2 of the Sherman Act and failed to allege facts sufficient to support a claim against TNT, Inc. under Section 1 of the Sherman Act?

2. In determining the sufficiency of the Amended Complaint under Federal Rule of Civil Procedure 12(b)(6), did the Tenth Circuit err in holding that to survive a motion to dismiss, an antitrust complaint must allege facts sufficient to demonstrate the existence of an antitrust claim?

3. Did the Tenth Circuit err in determining that Petitioner failed to allege facts sufficient to demonstrate either the existence of a group boycott of Petitioner or a conspiracy to monopolize the market for the TNT Channel?

PARTIES TO THE PROCEEDING

Petitioner TV Communications Network, Inc., as Plaintiff, and Respondent Turner Network Television, Inc., as one of several Defendants, were parties to the proceeding below.[1] ESPN, Inc., Capital Cities/ABC, Inc., Tele-Communications, Inc., United Artists Entertainment Company, American Television & Communications Corp., Scripps Howard Cable Company, Scripps Howard Communications, and Mile Hi Cable Company were the other Defendants in the proceedings before the District Court and the Tenth Circuit. Each of these other Defendants settled its claims with Petitioner prior to oral argument in the Tenth Circuit.

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[1] Pursuant to Supreme Court Rule 29.1, Respondent states that Turner Network Television, Inc. is a wholly owned subsidiary of Turner Broadcasting System, Inc. All of Turner Network Television, Inc.'s subsidiaries are wholly owned subsidiaries.

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STATUTES INVOLVED

Petitioner's Appendix D should be corrected to reflect that the following statutes are involved in this case:

Section 1 of the Sherman Act (as amended November 16, 1990), 15 U.S.C. § 1.

Trusts, etc., in restraint of trade illegal; penalty

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding $10,000,000 if a corporation, or, if any other person, $350,000, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court.

Section 2 of the Sherman Act (as amended November 16, 1990), 15 U.S.C. § 2.

Monopolization; penalty

Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding $10,000,000 if a corporation, or, if any other person, $350,000, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court.

Section 4 of the Clayton Act, 15 U.S.C. §15(a).

(a) Amount of Recovery; prejudgment interest. Except as provided in subsection (b), any person who shall be

STATEMENT OF THE CASE

A. Statement of Facts

This case involves the supply and distribution of television programming produced by TNT, Inc. and ESPN, Inc. for "subscription" or "nonbroadcast" television. In general, nonbroadcast television programming is produced by "programmers" which supply such programming to "operators." (App. C. 8-9 at ¶¶ 15, 16, 19, 20).[2] Operators distribute the programming of various programmers to local subscribers for a monthly fee. (App. C. 8 at ¶ 17).

Programming for nonbroadcast television is delivered to individual subscribers by operators primarily by means of coaxial cable. (App. C. 16 at ¶ 34). Some distributors of programming, however, do not utilize coaxial cable to distribute programming to their subscribers. For example, multichannel multipoint distribution service ("MMDS") or "wireless cable" operators deliver programming to their subscribers by means of terrestrial microwave transmission. (App. C. 16-17 at ¶¶ 35-36).

1. The Parties Below

TVCN is a "wireless cable" operator that distributes nonbroadcast television programming over-the-air on certain microwave frequencies to subscribers in the metropolitan Denver area. (App. C. 4 at ¶ 2; App. C. 17 at ¶ 36). Subscribers receive TVCN's microwave television signals by means of a small microwave antenna and associated electronic equipment. (App. C. 17 at ¶ 36).

TNT, Inc. is an entity which manufactures, produces and supplies various types of nonbroadcast television programming. TNT, Inc.'s programming allegedly consists of movies and other entertainment programs and certain "National Premium Sports

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[2] All facts are based on allegations set forth in the Amended Complaint which is reprinted as Appendix C to TVCN's Petition. References to the Amended Complaint are cited herein as follows: "(App. C ___ at ¶ ___)."

Programming." (App. C. 9 at ¶ 19). TNT, Inc. transmits its programming to "authorized affiliates" which in turn retransmit and distribute the TNT service via coaxial cable to local subscribers for a monthly fee. (App. C. 9 at ¶ 20).

ESPN, Inc., like TNT, Inc., is a programmer which is involved in the manufacture, production and wholesale supply of "National Premium Sports Programming" for nonbroadcast television. (App. C. 8 at ¶ 15). ESPN, Inc. also provides its programming to "authorized affiliates" which redistribute the ESPN service to their subscribers for a monthly fee. (App. C. 8-9 at ¶¶ 16, 17, 20).

Tele-Communications Inc. ("TCI"), United Artists Entertainment Co. ("UAE"), American Television and Communications Corp. ("ATC"), Scripps Howard Cable Company and Scripps Howard Communications ("Scripps") and Mile Hi Cable Company ("Mile Hi") are all cable operators that distribute television programming to subscribers in the greater Denver metropolitan area. (App. C. 4-6 at ¶¶ 4-7). Because each of these cable operators is the exclusive operator for one or more separate geographic areas within metropolitan Denver, (App. C. 9-11 at ¶¶ 21-26), these cable operators do not and have never competed against each other for the same subscribers. (App. C. 38 at ¶¶ 110; App. C. 41 at ¶ 124).

2. The Alleged Relevant Markets

According to the Amended Complaint, there are a number of "relevant product markets." Specifically, TVCN mentions the market for "subscription television" or "cable television subscription in metro Denver," the "National Premium Sports Programming" market, and the markets for the "TNT Channel" and the "ESPN Channel."

The product market for "subscription television" or "cable TV subscription in metro Denver" is the market in which operators distribute nonbroadcast television programming to subscribers. According to the Amended Complaint, this "market" is monopolized by Defendants TCI, ATC, UAE, Mile Hi, and

Scripps, which allegedly maintain a market share approaching 100% in their respective geographic areas of operation. (App. C. 11 at ¶ 27).

While not specifically described in the Amended Complaint, "National Premium Sports Programming" is alleged to be another relevant product market. TVCN alleges that both ESPN, Inc. and TNT, Inc. produce "National Premium Sports Programming" for nonbroadcast television. (App. C. 8 at ¶ 15; App. C. 9 at ¶ 19).

Finally, the "TNT Channel" which TVCN alleges to be simply TNT, Inc.'s programming and the "ESPN Channel" which is ESPN, Inc.'s programming, are also alleged to be relevant product markets. (App. C. 12-14 at ¶¶ 30, 32; App. C. 32 at ¶¶ 83-84). TVCN alleges that the relevant geographic market for all allegations of the Amended Complaint is the Denver metropolitan area. (App. C. 11 at ¶ 26).

3. Alleged Anticompetitive Conduct By TNT, Inc.

At the time the TNT service was launched, TNT, Inc. entered into exclusive affiliate agreements with various cable operators in the metropolitan Denver area which authorized such cable operators to receive and retransmit the TNT service to their local subscribers. (App. C. 24 at ¶ 55). Since November of 1988, TNT, Inc. has refused to authorize TVCN to receive and retransmit the TNT service to all potential subscribers in metro Denver. (App. C. 23-24 at ¶ 54).

TVCN generally alleges in Counts 2, 5 and 8 of the Amended Complaint that TNT, Inc.'s refusal to authorize TVCN to receive and retransmit the TNT service constitutes monopolization, attempted monopolization and conspiracy with "other Defendants" to monopolize the market for the TNT Channel in violation of Section 2 of the Sherman Act. (App. C. 51 at ¶¶ 156-158; App. C. 54 at ¶¶ 168-170; App. C. 57-58 at ¶¶ 180-182). Additionally, TVCN generally claims that TNT, Inc.'s refusal to authorize TVCN to receive and retransmit the TNT service has occurred as a result of an agreement

between "the Defendants" to boycott TVCN. (App. C. 26 at ¶¶ 62-63). The Amended Complaint also alleges that TNT, Inc. and other Defendants engaged in "territorial allocation schemes." (App. C. 38 at ¶ 110). According to the Amended Complaint, the alleged agreement to boycott TVCN and the alleged "territorial allocation schemes" constitute violations of Section 1 of the Sherman Act. (App. C. 59-60 at ¶ 189).

B. Proceedings Below

In May 1990, apparently as a result of ESPN, Inc.'s refusal to allow TVCN to provide the ESPN service to all of its subscribers, TVCN commenced this action by filing a Complaint which named ESPN, Inc. as the sole defendant. After ESPN, Inc. filed an initial motion to dismiss, TVCN, on August 18, 1990, filed its Amended Complaint which added Defendants Capital Cities/ ABC, Inc., TCI, UAE, ATC, Scripps, Mile Hi and TNT, Inc.

On September 28, 1990, all Defendants filed Motions to Dismiss the Amended Complaint. By Order dated December 21, 1990, the District Court of Colorado, Judge Sherman G. Finesilver, converted Defendants' Motions to Dismiss into Motions for Summary Judgment and granted these Motions. After TVCN filed a Motion to Alter or Amend Judgment, the District Court vacated its December 21, 1990 Order and granted the Defendants' Motions to Dismiss on April 5, 1991. TVCN appealed that decision to the Court of Appeals for the Tenth Circuit.

By Opinion dated May 19, 1992, the Court of Appeals for the Tenth Circuit affirmed the Opinion of the District Court. *TV Communications Network, Inc.* v. *Turner Network Television, Inc.*, 964 F.2d 1022 (10th Cir. 1992) (App. A.). In its Opinion, the Tenth Circuit determined that TVCN's reliance on the market for the TNT Channel as a basis for its monopolization and attempt to monopolize claims against TNT, Inc. rendered those claims insufficient as a matter of law. 964 F.2d at 1025-26 (App. A. 7-8). Additionally, because it found that TVCN had alleged no facts to support its claims that TNT, Inc. conspired

with the cable operator Defendants to further their monopoly power or that the alleged conspirators possessed a specific intent to monopolize, the Tenth Circuit held that TVCN had failed to allege a conspiracy to monopolize claim against TNT, Inc. 964 F.2d at 1026-27 (App. A. 9-11). Finally, the Tenth Circuit determined that TVCN had not alleged facts sufficient to support its conclusory allegations that TNT, Inc. had engaged in price fixing, group boycott or other concerted behavior in violation of Section 1 of the Sherman Act. 964 F.2d at 1027-28 (App. A. 12-14).

REASONS FOR DENYING THE PETITION FOR WRIT OF CERTIORARI

I. THE SUPREME COURT'S DECISION IN *EASTMAN KODAK CO.* v. *IMAGE TECHNICAL SERVICES, INC.*, 112 S. CT. 2072 (1992) PROVIDES NO BASIS FOR SUMMARY REVERSAL OF THE TENTH CIRCUIT'S DECISION.

After the Tenth Circuit issued its Opinion below, this Court announced its decision in *Eastman Kodak Co.* v. *Image Technical Services, Inc.*, 112 S. Ct. 2072 (1992). As this Court stated in its opinion, *Eastman Kodak* involved the issue of " . . . whether a defendant's lack of market power in the primary equipment market precludes — as a matter of law — the possibility of market power in derivative aftermarkets." 112 S. Ct. at 2076.

TVCN contends that *Eastman Kodak* mandates summary reversal of the Tenth Circuit's Opinion. This argument demonstrates a misunderstanding not only of the nature and scope of the Court's decision in *Eastman Kodak*, but also of the defective nature of TVCN's own allegations.

A. The Application Of *Eastman Kodak* Would Not Change The Tenth Circuit's Finding That TVCN's Alleged Product Market Does Not Provide A Basis For A Section 2 Claim Against TNT, Inc.

TVCN first argues that the Tenth Circuit committed error by determining that TVCN's failure to allege an appropriate product market rendered TVCN's monopolization and attempt to monopolize claims against TNT, Inc. fatally defective. Specifically, TVCN now contends that in using the alleged product market for the TNT Channel as the relevant market in its consideration of TVCN's claims, the Tenth Circuit either inappropriately ignored allegations which stated that the proper product market is the market for subscription television or erred in determining that the market for the TNT Channel cannot support claims against TNT, Inc. for monopolization and attempt to monopolize. (Petition at 13-14). Contrary to TVCN's contentions, *Eastman Kodak* provides no basis for summary reversal or further review of the Tenth Circuit's determination that TVCN's allegations of the relevant product market are insufficient as a matter of law.

If this Court were to accept TVCN's principal argument that the Tenth Circuit adopted the incorrect product market, *Eastman Kodak* would not be even remotely applicable to the issue before Court. Rather, at best, the question presented would involve a determination of whether the Tenth Circuit adopted the correct product market and whether that product market, the market for "subscription television," which is not a derivative aftermarket like that considered in *Eastman Kodak*, is sufficient to support a claim under Section 2 of the Sherman Act against TNT, Inc.

Moreover, even if the Court were to consider TVCN's claims based on a product market defined as "subscription television," the result reached would be identical to that reached by the Tenth Circuit. The alleged market for "subscription television" is the market in which operators distribute nonbroadcast television to subscribers. (App. C. 11 at ¶ 27). Because TVCN

has not and could not allege that TNT, Inc., a supplier of cable television programming, competes in the market for distribution of subscription television to subscribers, it would be impossible for TNT, Inc. to monopolize that market. In fact, TVCN's own allegations that Defendants TCI, ATC, UAE, Mile Hi and Scripps monopolize the market for subscription television in their respective geographic areas of operation demonstrate the contrived nature of TVCN's argument that the market for subscription television can provide a basis for a Section 2 claim against TNT, Inc. (App. C. 11 at ¶ 27).

Additionally, *Eastman Kodak* does not render erroneous the Tenth Circuit's conclusion that the alleged market for the TNT Channel does not provide a basis for a Section 2 claim against TNT, Inc. In determining that service and parts for Kodak equipment potentially could be a separate product market for purposes of Section 2, this Court considered the issue of market definition in the narrow context of a derivative aftermarket comprised of replacement parts and service for a particular brand of equipment. 112 S. Ct. at 2090. Because only Kodak parts could be used to service Kodak equipment, these parts necessarily could not have substitutes. By contrast, the TNT Channel is only one cable television service among many competing services. In fact, TVCN itself alleges that the aspect of TNT, Inc.'s programming which it considers unique, "National Premium Sports Programming" is also produced and provided by ESPN. (App. C. 8 at ¶ 15). Therefore, it is impossible to characterize the power which TNT, Inc. maintains over its own programming service as the power which can provide a basis for a claim under Section 2 of the Sherman Act. *See United States* v. *E. I. Du Pont De Nemours & Co.*, 351 U.S. 377, 392-93 (1956).

B. *Eastman Kodak* Has No Application To TVCN's Defective Allegations Of Conspiracy.

TVCN contends that this Court's decision in *Eastman Kodak* also mandates summary reversal of the Tenth Circuit's determination that TVCN failed to allege a conspiracy sufficient to provide a basis for either a conspiracy to monopolize claim or

a claim under Section 1 of the Sherman Act against TNT, Inc. Conspicuously absent from TVCN's argument, however, is any real effort to explain the applicability of this Court's decision in *Eastman Kodak* to those aspects of the Tenth Circuit's decision which address TVCN's conspiracy to monopolize and Section 1 claims. In fact, the portions of the Tenth Circuit's decision of which TVCN complains are not even remotely related to the narrow issues addressed by this Court in *Eastman Kodak*. Rather, the Tenth Circuit's Opinion merely constitutes an unremarkable finding that TVCN's defective allegations amount to little more than a conclusory statement that a conspiracy existed. *See TV Communications Network*, 964 F.2d at 1026-27 (App. A. 10). Because the Tenth Circuit's finding was not only correct, but also unexceptional, neither summary reversal nor a further substantive review of this aspect of the Tenth Circuit's Opinion is warranted.

II. THE ESTABLISHED STANDARD APPLIED BY THE TENTH CIRCUIT IN DETERMINING THE SUFFICIENCY OF TVCN'S AMENDED COMPLAINT DOES NOT CONFLICT WITH THE STANDARDS APPLIED BY OTHER CIRCUITS IN DECIDING MOTIONS TO DISMISS BROUGHT PURSUANT TO RULE 12(b)(6).

TVCN argues that in considering the sufficiency of TVCN's Complaint, the Tenth Circuit applied a standard which conflicts with the standards used by other circuits in deciding motions to dismiss brought pursuant to Rule 12(b)(6). Because of this alleged "inconsistency," TVCN contends that this Court should grant certiorari to establish the standard that lower federal courts should use in determining the sufficiency of a complaint in an antitrust case. TVCN's argument misinterprets applicable case law and ignores the substance of the Tenth Circuit's Opinion.

The standard to be utilized in deciding a motion brought pursuant to Rule 12(b)(6) is settled. Taking the plaintiff's allegations as true, "[a] court may dismiss a complaint only if it is clear

that no relief could be granted under any set of facts that could be proved consistent with the allegations." *Hishon* v. *King & Spalding*, 467 U.S. 69, 73 (1984). While modern rules allow liberality in pleading, however, it is well established that to state an antitrust claim, "a complaint . . . must contain either direct or inferential allegations respecting all the material elements necessary to sustain a recovery under some viable legal theory." *Car Carriers, Inc.* v. *Ford Motor Co.*, 745 F.2d 1101, 1106 (7th Cir. 1984), *cert. denied*, 470 U.S. 1054 (1985) (quoting *Sutliff, Inc.* v. *Donovan Cos.*, 727 F.2d 648, 654 (7th Cir. 1984)); *accord In re Plywood Antitrust Litigation*, 655 F.2d 627, 641 (5th Cir. 1981); *St. Joseph's Hospital, Inc.* v. *Hospital Corp. of America*, 795 F.2d 948, 954 (11th Cir. 1986); *Lombard's Inc.* v. *Prince Mfg., Inc.*, 753 F.2d 974, 975 (11th Cir. 1985), *cert. denied*, 474 U.S. 1082 (1986); *Crane & Shovel Sales Corp.* v. *Bucyrus-Erie Co.*, 854 F.2d 802, 805 (6th Cir. 1988). Conclusory allegations which merely state that the defendant violated the antitrust laws will not suffice. *See Larry R. George Sales Co.* v. *Cool Attic Corp.*, 587 F.2d 266, 273 (5th Cir. 1979); *Car Carriers, Inc.*, 745 F.2d at 1106; *Crane & Shovel Sales Corp.*, 854 F.2d at 805.

The cases which TVCN cites in support of its argument do not diverge from this settled standard. Rather, in those cases, the courts also applied the general principle that to survive a motion to dismiss, a plaintiff must allege facts sufficient to demonstrate the elements of a claim cognizable under the antitrust laws. *See Newman* v. *Universal Pictures*, 813 F.2d 1519, 1523 (9th Cir. 1987), *cert. denied*, 486 U.S. 1059 (1988) (affirming dismissal of antitrust complaint); *Kerasotes Michigan Theatres, Inc. v. Nat'l Amusements, Inc.*, 854 F.2d 135, 136-37 (6th Cir. 1988); *Andrea Theatres, Inc. v. Theatre Confections, Inc.*, 787 F.2d 59, 64-65 (2d Cir. 1986).

In its decision below, the Tenth Circuit construed the allegations of the Amended Complaint liberally according to the principles pronounced in Fed. R. Civ. P. 8 and well established case law. *See TV Communications Network, Inc.*, 964 F.2d at 1024 (App. A. 5). Contrary to TVCN's contentions, the standard

which the Tenth Circuit applied in determining the sufficiency of TVCN's Amended Complaint does not conflict in any way with the 12(b)(6) standards other circuits apply in determining the sufficiency of antitrust complaints. Rather, the standard articulated by the Tenth Circuit merely restates the well recognized principle that a plaintiff, to survive a motion to dismiss for failure to state a claim, must allege facts sufficient, if proved, to entitle it to relief.

TVCN's real complaint relates not to the Tenth Circuit's failure to use the correct standard in determining the sufficiency of its Amended Complaint, but rather the result reached by the Tenth Circuit after it conducted its analysis. Such dissatisfaction with the Tenth Circuit's decision does not provide a basis for review of that decision.

III. REVIEW OF THE TENTH CIRCUIT'S CONCLUSION THAT TVCN FAILED TO ALLEGE AN ILLEGAL GROUP BOYCOTT OR A CONSPIRACY TO MONOPOLIZE CLAIM IS UNWARRANTED.

TVCN finally contends that this Court should grant certiorari to review the Tenth Circuit's conclusion that TVCN failed to allege an illegal group boycott or a conspiracy to monopolize claim against TNT, Inc. Because the Tenth Circuit's conclusion was unremarkable and based on well established precedent, this Court should not grant certiorari to review that conclusion.

As this Court has recognized "*[p]er se* rules of illegality are appropriate only when they relate to conduct that is manifestly anticompetitive." *Continental T.V., Inc.* v. *GTE Sylvania, Inc.*, 433 U.S. 36, 49-50 (1977). In determining the legality of certain agreements "[i]t is important to distinguish between 'horizontal' restraints, *i.e.*, agreements between competitors at the same level of market structure and 'vertical' restraints, *i.e.*, combinations of persons at different levels of the market structure, such as manufacturers and distributors." *Oreck Corp.* v. *Whirlpool Corp.*, 579

F.2d 126, 131 (2d Cir. 1978). Horizontal restraints with no purpose except stifling competition are per se illegal. *See, e.g., United States* v. *Topco Associates, Inc.*, 405 U.S. 596, 608 (1972).

Refusals to deal can have characteristics which are horizontal and/or vertical. To protect against automatic condemnation of conduct which is not inherently anticompetitive, however, courts have held that absent an agreement on prices or price levels, a refusal to deal will not be deemed per se illegal unless it includes concerted action between two or more competitors at the same market level. *See, e.g., Lomar Wholesale Grocery, Inc.* v. *Dieter's Gourmet Foods, Inc.*, 824 F.2d 582, 591 (8th Cir. 1987), *cert. denied*, 484 U.S. 1010 (1988); *Key Financial Planning Corp.* v. *ITT Life Ins. Corp.*, 828 F.2d 635, 641 (10th Cir. 1987); *Bailey's, Inc.* v. *Windsor America, Inc.*, 948 F.2d 1018, 1031 (6th Cir. 1991).

TVCN predicates its group boycott claim on alleged concerted activity between TNT, Inc., a programmer, and the cable operator Defendants, which operate in the market for subscription television. The Amended Complaint, however, unambiguously alleges that the cable operator Defendants do not compete with each other for the same subscribers. (App. C. 38 at ¶ 110; App. C. 41 at ¶ 124). Because TVCN has not and cannot allege concerted activity between two or more competitors at the same market level, the Tenth Circuit correctly found that TVCN failed to allege a group boycott claim against TNT, Inc.

Additionally, TVCN's Section 1 claim could be dismissed for the independent reason that TVCN failed to allege the existence of a conspiracy to boycott. In its Amended Complaint, TVCN conclusorily alleges that the "defendants" have conspired to boycott TVCN and have agreed to divide the metro Denver subscription television market in violation of Section 1. TVCN, however, has not alleged any facts which demonstrate that TNT, Inc.'s refusal to deal with TVCN was part of a common scheme with the other defendants to boycott TVCN. The absence of such facts supporting its conspiracy allegations also renders TVCN's group boycott claim fatally defective. *See Lombard's, Inc.*, 753 F.2d at 975; *Sadler* v. *Rexair, Inc.*, 612 F. Supp. 491, 494 (D. Mont.

1985) ("A conclusory allegation of a conspiracy to restrain trade will not survive a motion to dismiss.").

For similar reasons, TVCN has no basis to seek review of the Tenth Circuit's finding that the Amended Complaint fails to allege a conspiracy to monopolize claim against TNT, Inc. TVCN's allegations relating to the alleged conspiracy to monopolize provide only that TNT, Inc. has conspired with "other Defendants" to monopolize the market for the TNT Channel. (App. C. 54 at ¶¶ 168-69). The Amended Complaint is devoid of any other allegations which explain any aspect of this alleged conspiracy. Because TVCN's allegations amount to no more than a conclusory allegation of conspiracy, TVCN has failed to allege the existence of the element of conspiracy. *See Telectronics Proprietary, Ltd.* v. *Medtronic, Inc.*, 687 F. Supp. 832, 838-39 (S.D.N.Y. 1988); *H.R.M., Inc.* v. *Tele-Communications, Inc.*, 653 F. Supp. 645, 648 (D. Colo. 1987); *Sadler*, 612 F. Supp. at 494.